

purpose by the participants in the enterprise, and activities which are related to these activities but are performed for the enterprise by a bona fide independent contractor (for example, an independent accounting or auditing firm). The latter activities are expressly excluded from the “enterprise” as defined. In addition, the definition contains a proviso detailing certain circumstances under which a retail or service establishment under independent ownership will not lose its status as a separate and distinct enterprise by reason of certain franchise and other arrangements which it may enter into with others. This proviso, the effect of which is more fully explained in parts 776 and 779 of this chapter, may be important to wholesale or bulk distributors of petroleum products in determining whether the effect of particular arrangements which they may make with retailers of their products will be to include activities of the latter with their own activities in the same enterprise for purposes of the Act.

§ 794.111 General characteristics of the statutory enterprise.

As defined in the Act, the term “enterprise” is roughly descriptive of a business rather than of an establishment or of an employer although on occasion the three may coincide. The enterprise, however, is not necessarily co-extensive with the entire business activities of an employer. The enterprise may consist of a single establishment which may be operated by one or more employers; or it may be composed of a number of establishments which may be operated by one or more employers. On the other hand, a single employer may operate more than one enterprise. The Act treats as separate enterprises different businesses which are unrelated to each other and lack any common business purpose, even if they are operated by the same employer.

“INDEPENDENTLY OWNED AND
CONTROLLED LOCAL ENTERPRISE”

§ 794.112 Only independent and local enterprises qualify for exemption.

The legislative history of the exemption (§ 794.101) shows that the pro-

ponents of an amendment to provide the relief which it grants from the overtime pay provisions of the Act were organizations of independent local merchants who did not as a rule engage extensively in interstate operations such as those typical of major oil companies, and who functioned primarily at the local level in distributing petroleum products at wholesale or in bulk. As a result the exemption provided by the Act, like that requested, was limited to enterprises which are “local” (§ 794.113) and are “independently owned and controlled” (§§ 794.114–794.118).

§ 794.113 The enterprise must be “local.”

It is clear from the language of section 7(b)(3) that the exemption which it provides is available to an enterprise only if it is a “local enterprise”. The other tests of exemption must also, of course be met. A “local” enterprise is not defined in the Act, and the word “local”, which appears in a different context elsewhere in the Act (see clause (2) of the last sentence of section 3(r) and sections 13(b)(7), 13(b)(11)), is likewise given no express definition. There is no fixed legal meaning of the term “local”; it is usually a flexible and comparative term whose meaning may vary in different contexts. As used here, certain guides are available from the context in which it is used, the legislative history surrounding adoption of section 7(b)(3), and the law of which it forms a part. A “local” enterprise engaged in the wholesale or bulk distribution of petroleum products is clearly intended to embrace the kind of enterprise operated by the merchants who requested the amendment; that is, one which provides farmers, homeowners, country merchants, and others in its locality with petroleum products in bulk quantities or at wholesale. The language of section 7(b)(3) makes it clear also that the enterprise will not be regarded as other than “local” merely because it has more than one bulk storage establishment. On the other hand, the section makes it equally clear that ordinarily an enterprise which is not located within a single State is not a local enterprise of the kind to which the exemption will